

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Revision of the Commission's Rules to
Ensure Compatibility with Enhanced 911
Emergency Calling Systems**

Petition for Limited Waiver

CC Docket No. 94-102

To: The Wireless Telecommunications Bureau

REQUEST FOR LIMITED WAIVER

Minnesota PCS Limited Partnership d/b/a Wireless North ("Wireless North"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a limited waiver of the June 30, 2002, deadline by which digital wireless systems must be capable of transmitting 911 calls from Text Telephone Devices ("TTY"). This requirement was imposed by the *Fourth Report and Order* in the above-captioned docket and Section 20.18(c) of the Commission's Rules.¹ In particular, financial hardship has made Wireless North's timely compliance with Section 20.18(c) impossible. Wireless North therefore requests that it be allowed until June 30, 2003, to test and deploy TTY capability throughout its network.

¹ See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Report and Order*, CC Docket No. 94-102, 15 FCC Rcd 25216 (2000); Section 20.18(c) of the Commission's Rules provides that "Licensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, *e.g.*, through the use of Text Telephone Devices (TTY). 47 C.F.R. § 20.18 (c).

I. BACKGROUND

Wireless North was initially licensed for 16 Broadband Personal Communications Service stations in Minnesota, Wisconsin, North Dakota and South Dakota. Due to factors beyond its control, Wireless North lost its funding to build out and maintain its system. As a result, Wireless North lost one license for failure to construct, and was forced to sell all but two of the remaining licenses. Those two remaining licenses are serving the rural communities of Fargo and Grand Forks, North Dakota. Wireless North uses Motorola equipment for its PCS network.

Wireless North is committed to complying with Commission requirements regarding TTY. However, in order to comply with these government mandates, Wireless North must upgrade its system. Unfortunately, at this time, Wireless North is in dire financial straits and cannot afford to purchase the necessary equipment required to upgrade its PCS system to comply with the various government mandates.

II. GOOD CAUSE EXISTS FOR WAIVER OF THE JUNE 30, 2002 DEADLINE

Wireless North submits that application of the June 30, 2002 deadline to it would be contrary to the public interest and unduly burdensome and respectfully requests an additional twelve months, until June 30, 2003, to come into compliance with Section 20.18(c) of the Commission's Rules.

Wireless North notes that the Commission has recently granted a number of requests for waiver based on grounds that complying with the waiver would cause the requestor financial

hardship.² The Commission waived Section 11.11(a) of its rules requiring cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2001. Wireless North respectfully requests similar treatment.

The Commission required small cable systems to provide it with certain information to justify a claim of financial hardship which would receive a waiver. The information requested included:

- Justification for the waiver, with reference to particular rule sections for which the waiver is sought;
- Information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible);
- The number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and
- The likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.

² See, e.g., Big Sandy Telecom, Inc., Order, Mimeo DA 02-1328, File No. EB-02-TS-094, (Released: June 21, 2002); Galaxy Telecom, L.P., Order, Mimeo DA 02-1330-1331, File No. EB-02-TS-122, (Released: June 21, 2002); Centre TV, Inc., Order, Mimeo DA 02-1446, File No. EB-02-TS-145, (Released: June 24, 2002); Milestone Communications, L.P., Order, Mimeo DA 02-1444, File No. EB-02-TS-053, (Released: June 24, 2002); Galaxy Telecom, L.P., Order, Mimeo DA 02-1329, File No. EB-02-TS-122, (Released: June 21, 2002); Mattawamkeag Cablevision, Order, Mimeo DA 02-1445, File No. EB-02-TS-051, (Released: June 24, 2002); KRM Cablevision, Inc., Order, Mimeo DA 02-1447, File No. EB-02-TS-143, (Released: June 24, 2002); Branch Cable, Inc., Order, Mimeo DA 02-1442, File No. EB-02-TS-069, (Released: June 24, 2002); Diode Cable Company, Order, Mimeo DA 02-1332, File No. EB-02-TS-141, (Released: June 21, 2002); Panora Cooperative Cable Association, Inc., Order, Mimeo DA 02-1333, File No. EB-02-TS-155, (Released: June 21, 2002) (collectively "the Cable Waiver cases").

III. JUSTIFICATION FOR WAIVER

Good cause exists for the FCC to grant Wireless North's request for a limited waiver of the June 30, 2002 TTY compliance deadline.³ Good cause is shown and waiver of a rule is appropriate if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."⁴ Similarly, under the Commission's rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁵ The Commission has consistently concluded that waiver of a regulatory deadline is appropriate when non-compliance "is due to circumstances beyond the licensee's control."⁶

A review of the Cable Waiver cases provides examples of what the Commission, or more accurately, the Enforcement Bureau of the Commission, considers likely to result in financial hardship for a small cable system operator. In Big Sandy Telecom, the Commission noted that, on its two systems, the company served 405 subscribers. It would cost approximately \$18,000 to outfit both systems with EAS equipment. The upgrade would cost Big Sandy \$44.44 per subscriber. In contrast, Wireless North has 3,675 subscribers loaded on its Fargo system and 643 subscribers on its Grand Forks system, for a total of 4,318 subscribers. Wireless North had been informed by Motorola that its system upgrade would cost roughly \$1.8 million. Averaged over

³ The Commission may grant an extension or waiver of a compliance deadline for good cause shown. *See* 47 C.F.R. § 1.3.

⁴ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir 1969).

⁵ *See* 47 C.F.R. § 1.925(b)(3).

⁶ *E.g.*, Order, McElroy Electronics Corp.; Request for Clarification of Commission Rules Regarding Section 22.911(a) in Relation to Construction of Cellular System for Market No. 15-A2, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

Wireless North's entire subscriber base, the requisite modifications would cost \$416.86 per subscriber, nearly ten times what an EAS upgrade would cost Big Sandy.

Below is a chart that is intended to illustrate the differences in cost per subscriber for rural cable systems that the Commission found to be likely to suffer financial hardship if forced to comply with regulatory requirements, with the cost per subscriber that Wireless North would have to pay to comply with the Commission's TTY rules, as well as Phase II E911 and CALEA.⁷

Company	# of Subscribers	Upgrade Cost	Cost per Subscriber
Centre TV, Inc.	1478	\$9,000	\$6.09
Panora Cooperative Cable Association, Inc.	1194	\$8,700	\$7.29
Mattawamkeag Cablevision	300	\$7,500	\$25.00
Branch Cable	3,030	\$100,000	\$33.00
Big Sandy Telecom, Inc.	405	\$18,000	\$44.44
Diode Cable Company	482	\$63,000	\$130.71
Wireless North	4,318	\$1,800,000	\$416.86

While Wireless North is aware that EAS equipment and TTY equipment are different, the principle behind the comparison is valid. Wireless North is a small, rural carrier and the upgrade of its system to support TTY, Phase II E911 and CALEA would cause it severe financial hardship. Wireless North therefore respectfully requests a twelve month waiver of the 20.18(c) of the Commission's Rules.

IV. INFORMATION ABOUT WIRELESS NORTH'S FINANCIAL STATUS

Wireless North has been informed by its vendor, Motorola, that the upgrade of its system for TTY, ALI and CALEA compliance would cost in the neighborhood of \$1.8 million.

⁷ Wireless North cannot upgrade its system separately for each regulatory requirement; the system upgrade would, if purchased and installed, fulfill all regulatory requirements. Likewise, Wireless North cannot apportion the cost burden to a single technology.

Wireless North cannot hope to be able to afford that upgrade. As mentioned above, Wireless North has 3,675 subscribers loaded on its Fargo system and 643 subscribers on its Grand Forks system, for a total of 4,318 subscribers. Averaged over Wireless North's entire subscriber base, the requisite modifications would cost \$416.86 per subscriber. Wireless North's system simply cannot absorb that cost and therefore respectfully requests an additional twelve months to achieve compliance with the Commission's TTY requirements.

Wireless North is not requesting an open-ended extension, but instead intends to achieve compliance as soon as possible. Strict enforcement of the TTY compliance deadline in this instance would be inequitable and especially burdensome on a small carrier such as Wireless North, because it lacks the customer base on which to spread the cost of compliance with government mandates. In support of Wireless North's request for waiver, it is separately submitting (with a request for confidentiality) a balance sheet, dated December 31, 2001 and an income statement of the same date. Also attached thereto, and dated December 31, 2000, is a set of consolidated financial statements together with an independent auditor's report. The independent auditor's report contained therein, and dated February 8, 2001, highlights the company's recurring losses from operations and net capital deficiency. The status of the company has not changed for the better since the various financial statements were prepared.

V. OTHER ENTITIES SERVING WIRELESS NORTH MARKETS

Wireless North's research indicates that Verizon Wireless, a competitor of Wireless North's in both its Fargo and its Grand Forks markets, represents on its web site that it is offering TTY products and services. Specifically, Verizon states, "As of June 30, 2002, Verizon

Wireless' digital network can now support the use of digital wireless phones and TTY devices."⁸ The Commission should note that a grant of the requested waiver will not result in a lack of service to persons with hearing disabilities in Wireless North's markets.

Wireless North concedes that the optimum situation would be to provide persons with the opportunity to choose between two or more competitors for their TTY service; however, an order from the Commission that Wireless North must provide TTY service while it is in its current financial condition would result in the closure of the company and the loss of service to its existing customers. Wireless North, as a competitor, would be forced to exit the market and consumers in Fargo and Grand Forks would have fewer choices for their wireless phone service. This result would be contrary to Section 309(j) of the Communications Act and the Small Business Act.⁹

VI. THE LIKELIHOOD OF HAZARDOUS RISKS

While the question of the likelihood of hazardous risks seems more applicable to cable system operators, Wireless North will address the question in regard to its market area and the consumers to be protected by Commission Rule Section 20.18(c). Persons with hearing disabilities do have the opportunity to obtain TTY products and services in Wireless North's markets through a competing carrier, as demonstrated above. Therefore, grant of the requested waiver to Wireless North will not result in harm to any individual requiring TTY products and services. Overall, the continued presence of Wireless North as a competitor will enhance choices for customers in these markets, and put pressure on other carriers to keep prices low.

⁸ A print-out of Verizon Wireless' web page indicating it is offering TTY-capable equipment and services throughout its system is attached hereto.

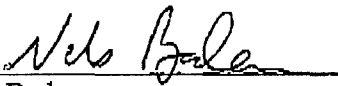
VII. CONCLUSION

It is clear that Wireless North is unable to meet the requirements due to matters that are utterly beyond its ability to control. Grant of the requested waiver may permit Wireless North to continue offering service to its customers, providing consumers in Fargo and Grand Forks with an alternative wireless carrier to choose from. In view of the foregoing, Wireless North respectfully submits that the waiver requested herein is in the public interest and respectfully requests that it be granted.

Respectfully submitted,

Minnesota PCS LP d/b/a Wireless North

By



Nels Baden

Officer, General Partner

13810 24th Avenue North
Plymouth, Minnesota 55441
(763) 512-8300

John A. Prendergast
Kathleen A. Kaercher
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW Suite 300
Washington, DC 20037

(202) 659-0830
(202) 828-5568 (fax)

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Wireless Products for People with Disabilities: Text Telephone (TTY) Products

With wireless phones becoming more portable, the smaller sizes of the phones have made it difficult to use them on TTY devices. However there are some products available that can work with TTYs. Some phones have a standard size handset that will work with a TTY's acoustic cups. Also, TTYs are now available with a connector that allows a wireless phone to be connected directly to the TTY. The TTYs that have the direct connect feature can be found at some of the TTY vendors listed below:

[Ultratec Inc.](#)
[Ameriphone Inc.](#)
[Krown Manufacturing Inc.](#)

- [Our Co](#)
- [Hearing](#)
- [Compati](#)
- [TTY/TR](#)
- [Product](#)
- [Telecom](#)
- [Contact](#)

Some portable TTYs that have a standard telephone connector known as an "RJ11 modular connector" can be used with some wireless phones. The phone would require a special RJ11 adapter that is made specifically for that phone and is available from the manufacturer.

As of June 30, 2002, Verizon Wireless' digital network can now support the use of digital wireless phones and TTY devices. Please note that not all digital wireless phones are TTY compatible. The following phones listed are TTY compatible and are now available from Verizon Wireless:



[Nokia 3285](#)



[Motorola V60c](#)

To view more details on one of these TTY compatible phones click on the phone image. To order one of these TTY Compatible phones [Click Here](#).

Text Telephone (TTY) Information and Telecommunications Relay Services (TRS)

1) [TTY - The Basics](#)

2) [Using a wireless phone with a TTY device.](#)

3) Using a wireless phone with a standard TTY device - using a RJ-11 compatible intelligent interface.

4) TTY - Etiquette

5) How to use Telecommunications Relay Service (TRS)

6) TRS Directory

711 Speed dial for TRS (Telecommunications Relay Service)

As of 10/01/01 you can use a speed dial to contact a TRS operator while on your cellular phone. Dial 711 from your cellular phone and you will be connected to a TRS operator to assist you with your call. The TRS operator will be in the state that you are calling from. Long distance charges may appear on your Verizon Wireless bill for connecting to the TRS center by dialing 711, depending on how the state TRS center is set up. Your Verizon Wireless bill will reflect 711 as the number called, and "TRS call" appearing next to it as well as all appropriate air time charges.

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